

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

THOMAS F. TRUE,)	2:13-cv-02228-DCN-WWD
)	
Plaintiff,)	
)	REPORT AND RECOMMENDATION
v.)	
)	
MARTIN SEPPALA;)	
NANCY SEPPALA; and)	
JOSHUA SEPPALA,)	
)	
Defendants.)	
_____)	

This breach of contract action based upon diversity of citizenship under 42 U.S.C. § 1442 by a federal prisoner, Thomas F. True, proceeding pro se is before the undersigned United States Magistrate Judge for a Report and Recommendation on the Defendants' Martin Seppala and Nancy Seppala Motion to Dismiss Plaintiff's Complaint under FED.R.CIV.P. 4(m) (Dkt.26) for failure to serve any Defendant within 120 days from the date the Summons was issued. 28 U.S.C. § 636(b).

A review of the record and relevant case law indicates that the motion should be denied. While it is true that the Summons in this matter was issued on October 22, 2013, and a defective service on these moving Defendants was not accomplished until April 3, 2014, the Defendants motion was filed on April 18, 2014, after the Plaintiff's motion to strike his defective service and for an extension of time to properly serve the Defendants was granted for good cause shown by then United States Magistrate Judge Bruce Howe Hendricks. (Dkt. 22). The Plaintiff was given until May 19, 2014, to serve the Defendants. The motion to dismiss should be denied as Plaintiff had sought and

received leave for good cause shown to serve the Defendants after the limitations period. Defendants Martin Seppala and Nancy Seppala were served and have answered the Complaint and their Local Rule 26.01 and 26.03 Interrogatories.

Accordingly, for the aforementioned reasons, it is recommended that the Motion to Dismiss (Dkt. 26) be denied.

IT IS SO RECOMMENDED.

August 15, 2014

Charleston, South Carolina



WALLACE W. DIXON
UNITED STATES MAGISTRATE JUDGE

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. **Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections.** “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

**Robin L. Blume, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402**

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).